IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7110 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RG KABADI

Versus

UNION OF INDIA

Appearance:
MR RAMNANDAN SINGH for the Petitioner.
MS PJ DAVAWALA for the Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/08/2002

CAV JUDGEMENT
(Per : MR.JUSTICE KUNDAN SINGH)

By means of this petition, the petitioner has prayed for a direction to the respondents to promote him to the rank of Assistant Commandant with effect from 16th April, 1998, with all consequential benefits including increments and payment of arrears of difference of salary.

2. This petition centres around the question whether DPC (Departmental Promotion Committee) can rely upon uncommunicated adverse remarks for not promoting a candidate ?

3. The petitioner was appointed as Sub Inspector in Central Reserved Police Force (CRPF) with effect from 7.12.1985. After completion of the training period, he was posted at Firozpur in Pubjab State. Thereafter, he was posted at several other places. He was then promoted to the rank of Inspector with effect from 1st March, 1992 on having successfully passed the departmental test, for promotion to the rank of Inspector in first attempt. He also passed the departmental test for Senior Inspector Cadre course held between May 1997 to August, 1997. He was deputed on special duty including for VVIPs and his duty was appreciated as outstanding performance with high discipline etc. Commendations were also issued by the Director, Special Protection Group, Cabinet Secretary for his outstanding duties on March 27-28, 1993, 4th July, 7th July, 1994; 7th July, 1990; 20th August, 1989; 8th October, 1990 and 13th to 17th March, 1994 and then also by the Hon'ble Prime Minister of India on 18.6.1991. The list of Inspectors who were promoted to the post of Assistant Commandant was circulated throughout on16th April, 1998. Then the petitioner came to know that his name was not finding place in the list of promotees though his immediate juniors were promoted with effect from 16th April, 1998. The petitioner made a representation immediately to the respondent no. 2 after coming to know about the list of promotees. The petitioner made a representation through proper channel for consideration of his promotion wherein the petitioner stated that he was never communicated about any adverse remarks or about any average remarks of his assessment. Even then his name was not considered for promotion. The petitioner received reply from 5th Battalion, CRPF on 23rd July, 1998 wherein it was intimated that his name was considered for promotion by DPC convened on 6th March 1998; but the petitioner could not make the grade. Hence, he was not considered to be promoted to the post of Commandant. Then the petitioner could be able to know

about his low grading and he made an application for review of ACR vide letter dated 18.12.1998 reiterated that he was never communicated about the average report or any adverse remarks. Therefore, no question arises for his down grading of ACR. He also prayed for the review of ACR and any such remarks, if caused, should be expunged and he may be promoted to the post of Assistant Commandant with his seniority. The petitioner also made another representation dated 15th June, 1999 communicating the violation of Rules. The petitioner was communicated a letter to the effect that the case of the petitioner was again considered, but the petitioner could not make the grading and his representation was rejected as devoid of any merits and he was informed by the letter dated 20th August, 1999. Hence, this petition.

3. The respondents have filed a reply wherein it is stated that there were 246 vacancies in the year 1997-98 but only 296 SMS/Inspctors having completed three years' service in the rank and having qualified in the Senior Inspector cadre course were available for consideration. Therefore, D.P.C. considefred 296 SMS/Inspectors including the petitioner. As per said para of DPC Rules for promotion to the rank of Assistant Commandant, the officers graded as outstanding will rank enblock senior to those who are graded as "very good" and officers graded as "very good" will rank enblock senior to those who are graded as "good". They will be placed in the select panel accordingly upto the number of vacancies, Officers with the same grading maintaining their interse seniority. The petitioner was at serial no. 243 of the zone of consideration and was graded as average by the DPC. Therefore, he could not be brought on panel for promotion to the rank of Assistant Commandant. In the subsequent meeting of the DPC held on 21st April, 1999 the name of the petitioner was at serial no. 84 of the zone of consideration and was graded as "good". SMS/Inspectors who were categorised as "very good" by the DPC were placed enblock senior to those categorised as "good" as per DPC Rules. As a result of upliftment of many SMS/Inspectors with "good" grading upto sr.no. 61 of the zone of consideration could only find place in the panel for promotion to the rank for Assistant Commandant. Since the petitioner could not make requisite grade in the above two DPC meetings, he was not brought on panel for promotion to the rank fo Assistant Commandant. The petitioner is not eligible for promotion retrospectively with reference to his junior with effect from 16.4.1998 as he was not on the panel for promotion to the rank of Assistant Commandant by the DPC

held on 6.3.1998 and 21.4.1999. The excellent performance as stated in para 3.2 was not the criteria for the promotion to the rank of Assistant Commandant when merit has to be recognised and rewarded, advancement in an officer's career should not be recorded as matter of course, but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the ACRs which are the basic inputs on the basis of which assessment is to be made by each DPC. As the petitioner was graded as average on the DPC of 6.3.1998 and as "good" in DPC dated 21st April, 1999, he could not come within the criteria prescribed therein. Awarding of commendation certificates alone is not a criteria for considering eligibility for promotion as advancement in an officer's career should not be regarded as a matter of course. The petitioner was categorised as "average" in DPC which was below the benchmark for promotion to the rank of Assistant Commndant. Therefore, the petitioner was not brought on panel in the DPC held on 6.3.1998 and his juniors who acquired higher grade were promoted to the rank of Assistant Commandant. However, it is mentioned in para-21 that the representation of the petitioner dated 18.12.1998 is under consideration by the competent authority. The petitioner has a right of consideration and the respondents, after duly considering the case of the petitioner found him unfit for promotion. The petitioner was graded as average in ACRs for the years 1995-96 and 1996-97. It need not be communicated in view of the rule position as they are not adverse remarks.

4. Heard the learned counsel for the parties at length. The contention of the learned counsel for the petitioner is that the petitioner has been given the grading of "average S.O." in the ACRs for the period from 1.4.1995 to 31.3.1996 and 1.4.1996 to 31.3.1997. The petitioner made an application dated 18.12.1998 for review of the ACRs vide his letter dated 8th January, 2000 and the competent authority informed the petitioner regarding the aforesaid entry as average S.O. If the petitioner thinks it proper to submit any report against adverse remarks, he may do so within one month of the receipt of the letter dated 8.1.2000. The petitioner also referred the letter dated 22nd November, 1999 which reveals that in revision, he was graded as "average" S.O. in ACRs for the period from 1.4.1995 to 31.3.1996 and 1.4.1996 to 31.3.1997. However, prior to this during 1.4.1993 to 31.3.1994; 1.4.1994 to 10.11.1994 and 1.12.1994 to 31.3.1995, he was awarded with "very good" and given outstanding grade respectively. On scrutiny of records of five battalions, CRPF as well as office, it

was revealed that he was neither communicated with average/adverse remarks nor downgrading in his ACRs. As per para 12.1 of the chapter 53, deals with promotion of establishment and administration mainly of DPC Rules. In case of average/down grading remarks are not communicated, earlier, then the DPC should defer his case and ask the cadre controlling authority concerned to communicate the adverse remarks to that individual so that the individual is given an opportunity to submit his representation. In the instant case, the DPC has decided the case and intimated and communicated vide IGP's office letter no. P VII-27/98-Estt/I dated 3.7.1998. The petitioner was considered for promotion to the rank of Assistant Commandant by DPC convened on 6.3.1998, but he could not make the grade. It was also found by the authority concerned that there was a lapse on the part of the department in not communicating the adverse/average remarks during the year 1.4.1995 to 31.3.1996 and 1.4.1996 to 31.3.1997. The authority itself has mentioned that he was not aware about the circumstances under which the petitioner's case was decided by the DPC. The representation submitted by the individual was also sent with a request that the case may be taken up with DTC General and CRPF, New Delhi to examine the report of DPC and submit parawise commencts on the Special Civil Application submitted by the individual vide his letter. The Assistant Director, Estt. has mentioned by going through the ACRs files of some officers, it was found that the assessment of an officer made by initiating the officer for a particular year grossly varies from the assessment made of the previous year. It was also found that an officer who has been very good, has all of a sudden become average or vice versa. While it is possible that there may be minor variations in the performance level, it cannot be agreed that there will be a sudden downfall or rise in the overall assessment of an officer. The authority has also made an observation that the reviewing officer should, after carefully going through the record and also based on his personal knowledge suo motu upgrade or downgrade ACRs, he should inquire about the reasons for such sudden variations IO/RO. The Reviewing/Super Reviewing Officer should invariably record his reasons for such upgrading/downgrading of the ACRs. In some case, it was noticed that RO or SRO while disagreeing with the assessment made by the Initiating officer, does not give reasons for his disagreement with the comments of the initiating officer which is a must. Some of the reviewing and superior reviewing officer merely stating that the officer reported upon has been underrated or over-rated without giving any specific comment which is

bad in law. The Reviewing and superior reviewing officer should record specific reasons for their disagreement with particular aspects of the report given by the initiating officer. All initiating, reviewing and superior reviewing officer were directed to strictly consider the above points before initiating reviewing and accepting ACRs of the officers. As such, guidelines had been given by the Assistant Director (ESTT) vide his letter No. R1/1/CR dated April, 1998.

The learned counsel for the petitioner also referred the departmental promotion committee Rules. As per point no. 12.1, adverse remarks in a CR, where the DPC find that the adverse remarks in the Confidential Report of an officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the Committee shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the CRs pertaining to three immediately preceding years prior to the year in which the DPC is held and direct thecadre controlling authority concerned to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a reprsentation against the same. Where the uncommunicated adverse remarks pertain to a period earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the officer concerned, the DPC may proceed with the consideration of the case but may ignore the remarks while making the assessment. It was also pointed out from the procedure to be observed by DPC as per Rule 6.2.1 regarding confidential reports. The DPC is required to assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year.) The DPC should not be guided merely by the overall grading, if any, that may, be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

4. On the basis of this, the learned counsel for the petitioner empathetically contended that it is not

disputed that the petitioner's record was outstanding, dotless and suddenly he was shown as an average officer that was not probable in the ordinary course. Moreover, those entries were not communicated to the petitioner for giving an opportunity of making a representation against those adverse remarks. The DPC under the Rules was required to defer the matetr and recommend the matter of the petitioner to an appropriate authority to provide an opportunity of making a representation regarding sudden downgrading and adverse remarks in respect of which the petitioner has been excluded or not found fit for promotion and juniors have been given promotion. The decision of the DPC relying on the uncommunicated remarks is illegal and not promoting the petitioner as per seniority is illegal and is in violation of principles of natural justice. As such, the decision of the DPC excluding the petitioner for promotion is not sustainable in the eye of law and is required to be quashed by this Court and he also requested for a direction to the department concerned to promote the petitioner from the date on which his juniors have been promoted.

5. On the contrary, the learned counsel for the respondents contended that according to DPC Rules, the DPC has selected candidates for promotion to Assistant Commandant on the basis of outstanding entries and very good entries. The petitioner was not falling within those entries, the petitioner was downgraded as "average". Hence, he could not be found fit for promotion and he was excluded after considering the material on record by the DPC.

6. We have carefully considered the contentions of the learned counsel for the parties and have gone through the papers on record. It is an undisputed fact that the petitioner's name has been excluded or the petitioner has not been promoted to the higher post by DPC or his name has not been empanelled for selection of Assistant Commandant only on the basis of that entries made in the ACRs of the petitioner as "average S.O.". It is also not disputed that those entries have never been communicated to the petitioner which have been relied on by the DPC in making the decision. The DPC has not cared to consider the reason of sudden downgrading from the authority concerned and erroneously relied on uncommunicated sudden downgrading which is in violation of Promotion Rules and instructions of the highest authority of the department. In the last, the petitioner has been directed by the authority concerned vide letter dated 8.1.2000 to make a representation against adverse remarks if he likes so and

the petitioner has already made a representation to that effect. As per the averments made in the written reply filed on behalf of the respondents, that representation of the petitioner is still pending for consideration by appropriate authority. As the petitioner has been given sudden downgrading as an average S.O. in his ACRS and the petitioner was never communicated those remarks and those remarks have been relied on by the DPC. However, the DPC was required to defer a decision regarding the petitioner at the time when the case of the petitioner was considered for promotion. As the entries of sudden fall in grade were considered for promotion and the entries which had been relied on by the DPC in arriving at the conclusion had never been communicated to the petitioner and the petitioner was not given an opportunity to make a representation in that respect. Thus, the answer to the question in the petition is "no". In the facts and circumstances, therefore, we think it proper to direct the petitioner to make a fresh representation to the respondent Director General of Police, Director General, CRPF, CGO complex, Lodhi Road, New Delhi within a period of three weeks from the date of the order. In case such a representation alongwith a copy of this order is made by the petitioner against adverse/average remarks within stipulated period, the respondent no. 2 will decide the same in accordance with law as per Promotion Rules and instructions dated April, 1998 no. R.1/1-CR-Cell of Assistant Director (Estt), Ministry of Home Affairs within a period of two months. thereafter. In case remarks made against the petitioner are expunged in his ACRs, the authority will consider the case of the petitioner for promotion from the date on which his juniors have been promoted. With these observations, this petition stands disposed of fin
Rule discharged with no order as to costs.

(J.N.Bhatt,J)

(Kundan Singh,J)

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